In these circumstances it is necessary to consider whether there was any presumption against the appellant. The Deputy Public Prosecutor has conceded that there was no such presumption. Paragraph (g) of section 37 relates to a dangerous drug concealed in any premises and provides that "it shall be presumed that the drug is concealed with the knowledge of the occupier of the premises." In this case the drug was found in a motor car and I am satisfied that a motor car does not constitute "premises" within the meaning of the Dangerous Drugs Ordinance.

Paragraph (d) referred to above raises a presumption that a person who is found to have had in his custody or under his control a dangerous drug shall be deemed, until the contrary is proved, to have been in possession of such drug. In this connection I would refer to the case of *Ho Seng Seng v. Rex*[1]. In that case the appellant was found carrying a basket containing one large paper parcel and one small. The large parcel contained opium. The defence was that the basket had been handed to the appellant by another person who is named, and that he, the appellant, did not know the contents of the basket. The learned District Judge took the view that the onus was upon the appellant to prove that he did not know what were the contents of the basket. The learned Acting Chief Justice of Singapore held, on appeal, that the onus was upon the prosecution to prove to the satisfaction of the Court that the appellant knew that a dangerous drug was in the basket. In my opinion, in this case under appeal, the onus was on the prosecution to show that the appellant knew what was in the tin found in his motor car. As I have already said, I find that his own statement as to the contents of the tin were inadmissible in evidence. In my view there is no other evidence to show that the appellant knew what was in the tin. The chandu was found in the boot of a car parked outside the house in which the appellant had spent the night. There is no evidence that the boot of the car was locked and indeed it would seem that it was not. A search was made on information received from some informer. There is no evidence that the tin was in the car at the time the car was parked and it is obvious that any person who so desired could have planted the tin of chandu there during the night. In these circumstances the appeal must succeed and the conviction and sentence be quashed.

There is one other matter to which I think I should refer, although it is not necessary for me to give any decision as I have decided to quash the conviction. The record shows that the sentence imposed in open Court was a fine of $5,000 and six months' imprisonment. The President has informed me that he overlooked the necessity for a term of imprisonment in default of payment of the fine but that immediately after the case in the absence of the appellant he fixed the period in default as twelve months' imprisonment.

The appellant says that he was sentenced to a fine of $5,000 or in default six months' imprisonment on the 28th August. He states in his affidavit that he received a letter dated the 29th August informing him that his sentence was $5,000 or twelve months' imprisonment and six months' imprisonment. I must accept that the original sentence was a fine of $5,000 and six months' imprisonment. In connection with the subsequent alteration of the sentence in the absence of the appellant I would draw attention to the case of *B. R. Lawrence v. The King*[2], in which the Privy Council held that a Judge has no jurisdiction after the discharge of the jury and in the absence of the accused to alter the sentence recorded at the trial. It may well be that if the matter were fully argued it could be contended that that decision has no application to what happened in this case. Nevertheless I would express the opinion that the learned President had no jurisdiction to amend his recorded sentence in the absence of the accused. I express no view as to whether or not the learned President could have sent for the convicted person either as soon as he discovered his error or in the event of a failure to pay the fine in a reasonable time and impose a term of imprisonment in default of payment in his presence. He could of course have issued a warrant of distress if the fine was not paid.

The appeal is allowed and the conviction and sentence are quashed.

Appeal allowed.

Solicitor for the appellant: *K. Chelvanayagam.*

HEAP TONG HOE & CO. v. YEW SIEW TUAN.

[O. C. J. (Spenser Wilkinson, J.) February 5, 1954]
[Penang — Originating Motion No. 24 of 1953]

Landlord and tenant — Control of Rent Ordinance, 1948, ss. 8(1)(d) & 13(1)(m) — Rent Assessment Board — Jurisdiction of — Certiorari.

This was an application for an order of certiorari to remove into the High Court and quash a certificate issued by the Rent Assessment Board on the ground that the Board had no jurisdiction to issue a certificate under the provisions of sections 8(1)(d) and 13(1)(m) of the Control of Rent Ordinance; 1948, in favour of someone who was not the owner of the building. The evidence disclosed that the owner of the actual building known as No. 9 Fish Lane was not the owner of the land upon which it is erected. Part of the order of the Board read as follows:—

> "The Board is satisfied that the applicant as the owner of the land on which is erected the premises known as No. 9 Fish Lane, Penang, but of which the respondents are the owners, intends to demolish them for the purpose of re-building."

Held: as the applicant was not the owner of the building the Board had no jurisdiction to issue the certificate in question; (2) as the Board exceeded its jurisdiction the application for certiorari must be allowed and the certificate of the Board quashed.

Cases referred to:—

(1) *Rex v. Rent Tribunal for Paddington* (1947) 1 All E.R. 448.

(2) *Rex v. Minister of Health* (1938) 4 All E.R. 32.

(3) *Rex v. Woodhouse* (1906) 2 K.B. 502.

(4) *Rex v. Bradley* 70 L.T. 379 at page 381.

(5) *Rex v. Bradford* (1908) 1 K.B. 365.

(6) *Reg. v. Manchester Justices* (1899) 1 Q.B. 571.

APPLICATION FOR CERTIORARI.

Lim Cheng Ean for the applicants.

Eusoffe Abdoolcader for the respondents.

Cur. Adv. Vult.

Spenser Wilkinson, J. : — This was an application for an Order of *Certiorari* to remove into the High Court and quash a certificate issued by the Rent Assessment Board under the Control of Rent Ordinance, 1948. The certificate in question is in the following terms :—

"I, K. J. Henderson, President of the Rent Assessment Board for the Municipal Area of George Town, Penang HEREBY CERTIFY that the Board is satisfied that Yew Siew Tuan (m.w.) the applicant above-named, the owner of the land on which is erected the premises known as No. 9, Fish Lane, Penang intends to demolish them for the purpose of re-building and that in the opinion of the said Board, it is in the public interest that the said Yew Siew Tuan (m.w.) should be permitted to do so.

Dated at Penang this 13th day of August, 1953.

(Signed) K. J. HENDERSON,
President,
Rent Assessment Board,
Penang."

On the face of the certificate issued by the Board it is in order; but it has been shown by affidavit that the owner of the actual building known as No. 9, Fish Lane is not the owner of the land upon which it is erected. The Order made by the Board at the same time as the certificate makes the position clear. Part of that Order reads as follows :—

"The Board is satisfied that the applicant as the owner of the land on which is erected the premises known as No. 9, Fish Lane, Penang, but of which the respondents are the owners, intends to demolish them for the purpose of re-building."

It is apparent at once from this wording that the Board was satisfied that the applicant intended to demolish somebody else's building.

The case for the applicants is that the Board had no jurisdiction to issue a certificate under the provisions of sections 8(1)(d) and 13(1)(m) of the Ordinance in favour of someone who was not the owner of the building.

The first question that arises for decision, therefore, is the meaning of paragraph (m) of section 13(1) of the Control of Rent Ordinance. That paragraph reads as follows :—

"(m) Where the President or Chairman of the Board has certified that the Board is satisfied that the owner of the premises intends to demolish them for the purpose of re-building and in its opinion it is in the public interest that he should be permitted so to do;

Provided that an order or judgment shall not be made or given under this paragraph unless the Court is satisfied that the owner of the premises has complied with any order or conditions which the Board may have seen fit to make or impose."

Section 2 of the Ordinance provides that unless the subject or context otherwise requires :—

" 'Premises' means any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building in which persons are employed or work and any part of any premises let or sub-let separately and includes any land whereon any such building is or has been erected with the consent of the landlord...."

Does the word "premises" here include the land upon which the building rests? In my opinion the context of paragraph (m) clearly requires that the extended meaning of the expression given to the word "premises" by section 2 should not be imported. It seems to me that the words "the owner of the premises intends to demolish them for the purpose of re-building" can apply only to some form of building or erection which can be demolished or rebuilt and cannot be applied to land. Land can neither be demolished nor rebuilt, and to construe the word "premises" in this context as including the land upon which a building rests appears to me to reduce the provision to an absurdity.

It was suggested by Mr. Abdoolcader on behalf of the respondent that the wording of the proviso indicated that the word "premises" ought to include the land. I am unable to accept this view. I see no reason to think that the expression "the owner of the premises" in the proviso means anything different from the same expression in the main part of the paragraph. The whole paragraph to my mind contemplates an intention on the part of an owner of a building in which there are tenants to demolish that building in order to rebuild it; and the proviso enables the Board to impose conditions as between the landlord and the occupants presumably with a view *inter alia* to protecting the occupants from too sudden an eviction. I can see nothing in the proviso to suggest that an

owner of land, who is not the owner of the building in question, would be in any way concerned with conditions imposed on the owner of the building.

If I am right in construing paragraph (m) as referring only to the owner of the building then it follows that the Board was wrong in giving a certificate of satisfaction and in making an order in favour of the proprietor of the land based on paragraph (m) of section 13(1).

It does not, however, necessarily follow that *certiorari* will lie to quash the certificate. Mr. Abdoolcader, in a careful and attractive argument, contended that the question of whether or not the applicant in the Rent Board proceedings was the owner of the "premises" was part of the very issue which the Court had to inquire into and that therefore this was a case in which *certiorari* would not be granted. The following passage from *Halsbury's Laws of England* indicates very clearly the issue thus raised :—

"1485. The case is more difficult where the jurisdiction of the Court below depends, not upon some preliminary proceeding, but upon the existence of some particular fact. If the fact be collateral to the actual matter which the lower Court has to try, that Court cannot, by a wrong decision with regard to it, give itself jurisdiction which it would not otherwise possess. The lower Court must, indeed, decide as to the collateral fact, in the first instance; but the superior Court may upon certiorari inquire into the correctness of the decision, and may quash the proceedings in the lower Court if such decision is erroneous, or at any rate if there is no evidence to support it. On the other hand if the fact in question be not collateral, but a part of the very issue which the lower Court has to inquire into certiorari will not be granted, although the lower Court may have arrived at an erroneous conclusion with regard to it."

There are two important considerations which make it necessary to consider Mr. Abdoolcader's argument with great care. In the first place a decision of the Rent Board is one in respect of which no appeal lies to the High Court, and the Courts have always discouraged procedure by way of *certiorari* being used as a substitute for an appeal in cases where no appeal in fact lies. Secondly, the only effect which the certificate of the Board has is that it is a condition precedent to any order which might be made by a Court under section 13 of the Ordinance. It would still, therefore, be open to the applicants in these proceedings to contest any proceedings for ejectment which might be taken in any Court upon the grounds which they are raising in the present application.

In *Rex v. Rent Tribunal for Paddington*[1] it was held that *certiorari* would not be granted on the ground that the tribunal had not considered certain matters which they ought to have taken into account. Great reliance was placed on the paragraph in *Halsbury's Laws of England*, volume 9, paragraph 1493, which was quoted in the judgment and had already been quoted in *Rex v. Minister of Health*[2] by Greer. L.J. The paragraph referred to reads as follows :—

"Where the proceedings are regular upon their face and the magistrates had jurisdiction, the superior court will not grant the writ of certiorari on the ground that the court below has misconceived a point of law. When the court below has jurisdiction to decide a matter, it cannot be deemed to exceed or abuse its jurisdiction merely because it incidentally misconstrues a statute or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence, or convicts without evidence...."

It will be seen, however, that before this paragraph can apply the proceedings must be both regular on their face and with jurisdiction.

Some reliance was placed on the case of *Rex v. Woodhouse*[3] part of the headnote to which reads as follows :—

"**Semble**, by Vaughan Williams, L.J. and Stirling, L.J. (Fletcher Moulton, L.J. dissenting), that no ground for the issue of a certiorari to bring up a licence granted by licensing justices is afforded by the fact that the justices have erroneously decided that the applicant for the licence was such a person or such an occupier as aforesaid."

It appears to me that that part of the judgment of Vaughan Williams L.J. which deals with this point is *obiter*. Sterling L.J. whilst agreeing in general terms with the judgment of Vaughan Williams L.J. did not himself deal with the point and Fletcher Moulton L.J. expressed a contrary view. With great respect I do not think the observations of Vaugham Williams L.J. in this case are in accordance with the trend of other cases where the point has been expressly decided.

One of the tests which has been laid down for deciding upon which side of the line a particular case lies is contained in the judgment of Cave, J. in *Rex v. Bradley*[4]. He there says :—

"One test for ascertaining whether a matter is within the jurisdiction of magistrates or not is to consider the nature of the arguments used against the magistrates. If there was no jurisdiction, the magistrates ought not to have decided the case at all; but if the contention is that the magistrates ought to have come to a different decision on the merits it is quite clear that they had jurisdiction."

The contention in the present case is that the Board had no jurisdiction at all, and I think the words of Lord Justice Fletcher Moulton in *Rex v. Woodhouse*[3] are entirely applicable. He said :—

"The various cases that thus arise are exhaustively dealt with in the case of Colonial Bank of Australasia v. Willan (L.R. 5 P.C., 417). Speaking for myself I am of opinion that the present case comes within the third class spoken of on page 444 of the report, namely cases in which the judge of the inferior court, having legitimately commenced the inquiry, is met with some fact which, if established, would oust his jurisdiction and place the subject-matter of the inquiry beyond it."

It seems to me that the Board, having legitimately commenced its inquiry, met in the course thereof a fact, namely that the applicant was not the owner of the building, which ousted their jurisdiction and placed

the subject-matter of the inquiry beyond it. I am supported in this view by the cases of *Rex v. Bradford*[5] and *Reg. v. Manchester Justices*[6]. The following passage from the judgment of Channell, J. in the latter case appears to me to be in point:—

"But the case of Reg. v. Allmey (35 J.P. 534) decides that the house must be a dwelling-house in the sense that somebody must sleep there. That case, therefore, assuming it to be good law.....shews that..... no person who does not sleep on the premises is entitled to have a licence to sell beer under the Act of 1840. That being so, the justices in granting their certificate to Mr. Robinson exceeded their jurisdiction. It is true that they considered the question whether he was a person qualified to hold the licence, and they came to the conclusion that he was. But it seems to me to be clear that a tribunal cannot give itself a jurisdiction which it has not got by taking an erroneous view of the law."

In my opinion under the wording of paragraph (m) in section 13(1) of the Ordinance, as I read it, what the Board has to decide is whether the owner of the building intends to demolish it for the purpose of rebuilding. That is the basic issue which they have to decide. Whether the party who is before them is or is not the owner of the building is, in my view, a preliminary question, and if it turns out that the owner of the building is not in fact before the tribunal then it appears to me that they can have no jurisdiction to arrive at any determination regarding his intentions; nor have they jurisdiction to reach a determination about the intention of someone who is not the owner of the building.

As I read the decided cases the distinction that has to be drawn is between those cases where the inferior tribunal has misconstrued the law in the course of deciding an issue properly before it (in which case the decision could only be rectified by way of appeal); and those cases where the tribunal has misread the law so as to give itself an apparent jurisdiction which, on a correct view of the law, it does not psssess. In my opinion, upon a correct view of the law, the Rent Board in this case exceeded its jurisdiction so that its proceedings properly come within the purview of *certiorari*.

For these reasons the application for *certiorairi* must be allowed and the certificate of the Board quashed.

Application allowed.

Solicitor for the applicants: *Lim Cheng Ean.*

Solicitor for the respondent: *Ong Huck Lim.*

ABUBAKAR BIN ISMAIL v. REGINA.

[A. Cr. J. (Brown, J.) November 4, 1953]

[Singapore — Magistrates Appeal No. 111 of 1953]

Road Traffic Ordinance, s. 80(1)(a) — False Statement by Licensing Officer — Evidence of similar acts.

The appellant, an Assistant Licensing Officer, was convicted on 2 charges with making a false statement for the purpose of obtaining the grant of a driving licence. In each case the application form was endorsed by the appellant to the effect that he had seen the applicant's Federation driving licence, which thus exempted the applicant from the necessity of passing a driving test in Singapore. Evidence to show similar endorsements by the appellant was produced. One of the grounds of appeal was whether such evidence of similar acts was admissible.

By section 11(2) of the Evidence Ordinance — "Facts not otherwise relevant are relevant if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable."

The fact in issue was whether, upon the dates referred to in the charges, Federation driving licences were produced to the appellant or not. Does the fact that on the 8 previous occasions the appellant made similar endorsements without any Federation driving licence being produced make it "highly probable" that no Federation driving licences were produced upon the 2 dates which are material to these charges? Or does it merely tend to prove that the appellant, having done this before, is the sort of man who would probably do it on the 2 occasions charged.

Held: the evidence of similar acts in this case went far beyond showing that the appellant, having committed similar acts previously, was a person who was likely to have committed the 2 acts with which he was charged, and that the evidence of the previous 8 cases was relevant to the issue which was before the Court.

Held also: the 8 witnesses who gave evidence as to the previous similar acts must be regarded as accomplices.

Cases Referred to:—

(1) *Rex v. Bond* 1906, 2 K.B. at p. 394.

(2) *Thompson v. The King,* (1919) A.C. at p. 232.

(3) *Rex v. Mohamed Farid,* 30 Cr. App. R. 168.

MAGISTRATE'S APPEAL.

N. A. Mallal (*C. H. Koh* with him) for the appellant.

A. H. Simpson (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Brown, Ag. C.J.: —The appellant was convicted upon two charges under section 80(1)(a) of the Road Traffic Ordinance with making a false statement in his capacity as Assistant Licensing Officer for the purpose of obtaining the grant of a driving licence to one Ng Jim Sin on the 30th of October 1952 (on the first charge) and to one Chan How Aik on the 4th of November 1952 (on the second charge). The facts